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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,531	01/09/2004	Yasuhiko Kenmochi	2038-320	6485
23429 7590 08/21/2008 LOWE HAUPTMAN HAM & BERNER, LLP 1700 DIAGONAL ROAD SUITE 300 ALEXANDRIA, VA 22314				
EXAMINER				
KIDWELL, MICHELE M				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
08/21/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/753,531

**Applicant(s)**

KENMOCHI ET AL.

**Examiner**

Michele Kidwell

**Art Unit**

3761

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 22 and 24-32 is/are pending in the application.
- 4a) Of the above claim(s) 5, 22, 25, 26 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10, 24, 27, 28 and 30-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Species 1 in the reply filed on September 13, 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 5, 22, 25 – 26 and 29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 13, 2007.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 4, 6 – 10, 24, 27 – 28 and 30 – 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Otsubo (US 6,666,851)

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 7 and 27 Otsubo discloses pull-on/brief type disposable diaper 1 (column 1, lines 49-50) comprising a liquid absorbent core 14 laid in front region 2 (column 2, lines 63-67, figure 1); a crotch region 10 having tapering first folding guide lines L1 extending from first leg surrounding lateral margins 7a toward a transverse middle zone 10a and tapering second folding guide lines L2 extending from second leg surrounding lateral margins towards a transverse middle 10a and a third zone S3 except first zone S1 and second zone S2 (column 3, lines 15-30); first and second leg elastics 31 are considered to be located inboard opposite sides of core and longitudinal barriers 30 extend across the first zone S1 to the third zone S3 (column 4, lines 35-40, figure 6); said first zone S1 and said second zone S2 being pulled inward to form tucks which are convexly inward of a leg hole 7 (column 3, lines 39-48, figure 2).

Regarding claims 2 and 3 Otsubo discloses elastic members 30 as discussed above with respect to claim 1. In turn, Otsubo inherently discloses the contraction percentage and stretch stress ranges claimed since where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or

obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). Furthermore, since a compound and all its properties are inseparable. In re Papesch, 315 F.2d 381,391,137 USPQ 43, 51 (CCPA 1963), these values are met since Otsubo discloses the claimed elastics.

Regarding claims 4 and 10 see figure 4 showing third zone (S3) including welding zone 16 which is not included in first and second zones (S1,S2) and outside of folding guide lines thereby resulting in the claimed basis weight or density.

Regarding claim 6 Otsubo further discloses absorbent core 14 disposed between liquid pervious topsheet 12 and liquid impervious backsheet 13 (column 2, lines 63-67).

Regarding claims 8-9 Otsubo further discloses elastics 30 are directly attached to core 14 and thus disposed between impervious backsheet 13 and core 14 (column 4, lines 35-40).

Regarding claim 10 Otsubo further discloses elastics 30 are shorter in a longitudinal direction than core 14 (figures 1 and 6).

Regarding claims 24 and 30 – 32 see col. 2, lines 63 – 67 and col. 4, lines 31 – 35.

### ***Response to Arguments***

Applicant's arguments filed May 19, 2008 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claim 5 are moot in view of the withdrawal of claim 5 as being directed to a non-elected species.

With respect to the applicant's argument that Otsubo does not teach elastics located inboard of the absorbent core, the examiner disagrees. As set forth in the rejection of claim 1, the elastics are considered inboard of opposite side edges of the absorbent core.

Regarding claims 8 and 9, see col. 2, lines 3 – 8 which disclose that the core is located between the top sheet and backsheet thereby providing a direct attachment between the core and elastics secured to either layer.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/  
Primary Examiner, Art Unit 3761